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July 22, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

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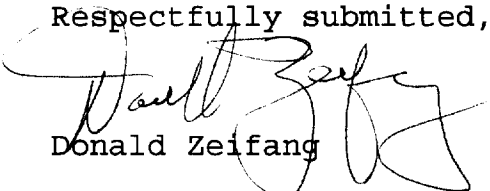
Re: MM Docket No. 96-120
RM-7651

Dear Mr. Caton:

On behalf of WTBO-WKGO Corporation, licensee of FM broadcast station WKGO(FM), Cumberland, Maryland, we transmit herewith comments in the above-referenced proceeding.

We should note that in proposing to eliminate any mention of agreements between affected stations in Section 73.213(a), the Commission may be inadvertently abrogating provisions of such existing agreements that should be honored and enforced, e.g., agreements with respect to reimbursement of expenses. It is respectfully requested that the Commission recognize limits on its jurisdiction to abrogate contracts by making clear that provisions otherwise valid and enforceable will not be abrogated by this proposal.

Respectfully submitted,


Donald Zeifang

cc: Donald G. Everist
(w/enclosures)

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COHEN, DIPPELL AND EVERIST, P. C.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Grandfathered Short-Spaced) MM Docket No. 96-120
FM Stations) RM-7651

**COMMENTS IN RESPONSE TO
NOTICE OF PROPOSED RULE MAKING**

These comments are prepared on behalf of WTBO-WKGO Corporation ("WTBO-WKGO") in MM Docket 96-120, RM-7651 which pertains to eliminating unnecessary regulations and streamlining the current method of modifying pre-1964 grandfathered short-spaced FM stations. WTBO-WKGO applauds the Commission in trying to achieve an easier and more flexible set of technical criteria for pre-1964 grandfathered FM stations.

WTBO-WKGO is licensee of WKGO(FM), Cumberland, Maryland, which operates on Channel 291B (106.1 MHz) with an effective radiated power (ERP) of 4 kW H&V and 427 meters antenna height above average terrain. The 4 kW operation was authorized by the criteria set forth in the First Report and Order, Docket 14185. On July 25, 1962, the FCC adopted Docket 14185 which, among other things, authorized Class B stations to operate with facilities of 50 kW at a height above average terrain of 500 feet. The 1 mV/m contour was predicted to extend 33 miles in accordance with the then curves contained in Section 3.333 of the FCC Rules in effect at that time. Section 3.209(b)(1) and (2) entitled, "Power and Antenna Height Requirements" has been extracted and is as follows:

The maximum effective radiated power in any direction, and maximum antenna height for equivalence purposes, shall be as follows for the various classes of stations:

	<u>Maximum Power</u>	<u>Maximum Antenna Height (feet above average terrain)</u>
Class A	3 kW (4.8 dBk)	300
Class B	50 kW (17.0 dBk)	500
Class C	100 kW (20.0 dBk)	2,000

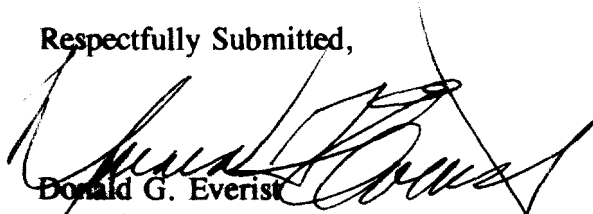
Antenna height may be used exceeding those specified in this paragraph for equivalence purposes, provided effective radiated power is reduced in the amount determined by use of the appropriate curves in Figure 3 of §3.333. Where, under Figure 3 of §3.333, effective radiated power must be reduced to an amount less than the normal minimum specified in paragraph (a)(1) of this section for the class of station involved, the effective radiated power determination by Figure 3 of §3.333 shall be the minimum for the station involved.

Note: For convenience, Figure 3 is included with this report.

WKGO(FM) filed application (FCC File No. BPH4217) for its current licensed facility of 4 kW ERP at 427 meters HAAT which was granted by the FCC and then subsequently licensed in 1968. The ERP of 4 kW at 427 meters HAAT is the equivalent of the then rules, i.e., 50 kW at 500 feet HAAT. During the intervening years, WKGO(FM) has operated as a full Class B facility. In 1984, the FCC changed the propagation curves, thereby opening the possibility that WKGO(FM) could raise its power in accordance with the new curves, as WKGO(FM) was operating at less than the equivalent of a Class B as a result of the implementation of the new curves. Currently, WKGO(FM) has on file an application (BPH-950130IE) to raise its power to 5.5 kW at 427 meters HAAT. However, the Commission indicates that WKGO must amend its application since the FCC deems the application in violation of Section 73.213(a). The Commission's logic is as a result of what it believes is a substantive change of the rules in MM Docket No. 86-144¹. WTBO-WKGO wishes to point out that application BPH-950130IE request no change in site, no change in height above average terrain, but only desires to restore its rightful privilege to operate as the equivalent of 50 kW at 500 feet.

It is respectfully requested that the Commission provide in its new rules opportunities for stations such as WKGO(FM) to restore their facilities as originally intended.

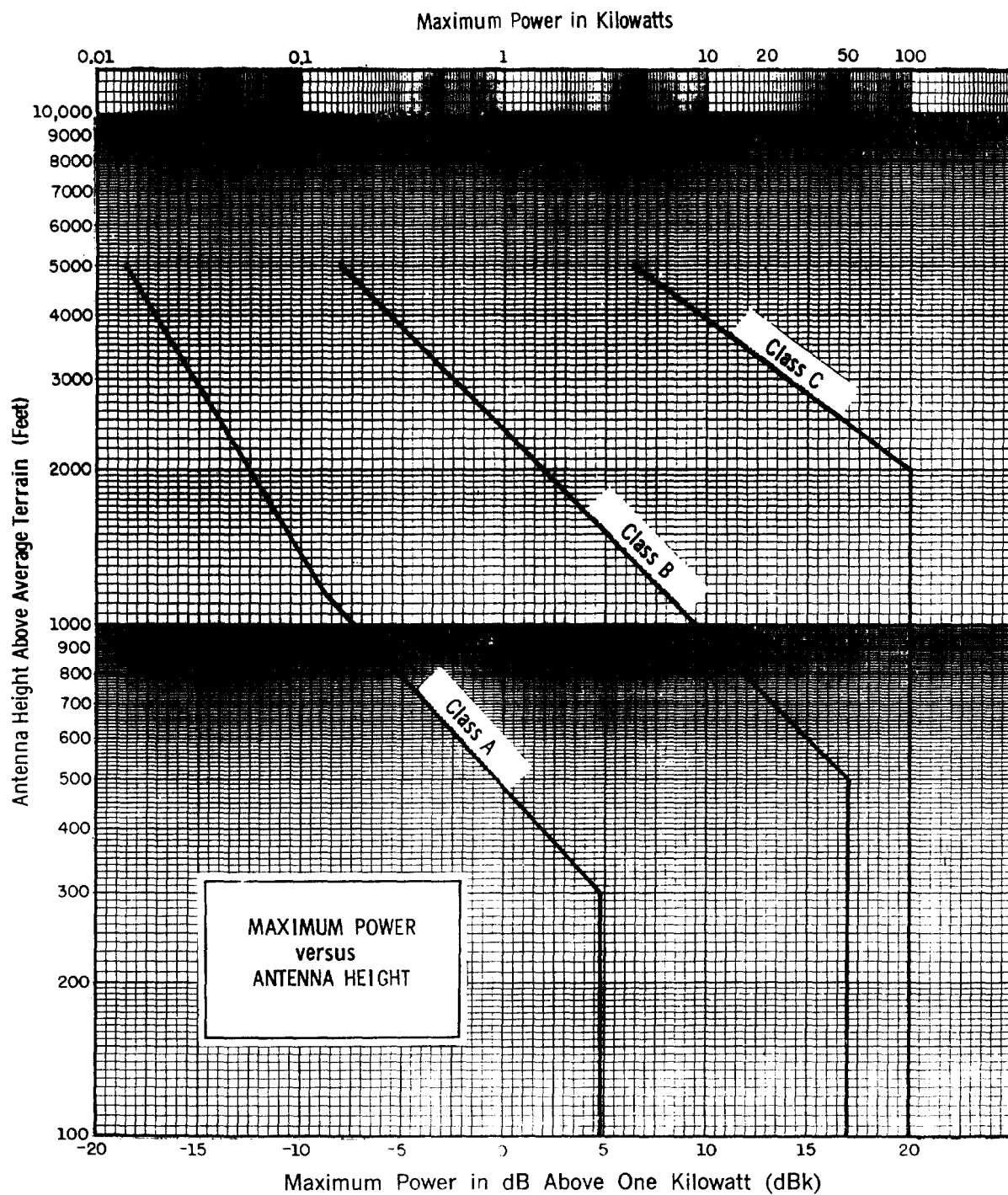
Respectfully Submitted,



Donald G. Everist
Consulting Engineer
for WKGO(FM)

Date: July 22, 1996

¹Effective November 9, 1987, Second Report and Order, Docket No. 86-144, 63RR 2d 1262.



FCC § 73.333, FIGURE 3
[Revised 2-10-70]